



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/167773

PRELIMINARY RECITALS

Pursuant to a petition filed August 04, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Racine County Human Service Department in regard to Child Care, a hearing was held on September 01, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency correctly terminated child care benefits for the petitioner's teenage foster care daughter's child effective March 1, 2015 for failing to complete a six month renewal of benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Lee Mandeline Rice
Racine County Human Service Department
1717 Taylor Ave
Racine, WI 53403

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. The petitioner had a teenage foster child in her care. The teenage foster child had a baby. The baby was also living in the petitioner's home. The child care benefits at issue are for the foster

child's baby for periods of time during which the foster child attended high school. The petitioner was not able to watch the baby because she is a disabled individual who is unable to lift more than 10 pounds. The petitioner previously verified that information in September 2013 with a signed doctor's statement.

3. On January 19, 2015 the agency sent the petitioner a six month report form for child care benefits. The form was due February 5, 2015. The petitioner did not receive the form, and failed to complete and return the form by February 5, 2015.
4. On February 16, 2015 the agency sent the petitioner a notice stating that her child care eligibility was ending February 28, 2015 unless she completed and returned the six month report form.
5. On February 27, 2015 the petitioner came to the agency with her six month report form completed. The front desk worker told her that she did not need many of the pages because this was a child care case for her foster child's baby. The worker then faxed "the necessary" pages to the correct department. There was also an issue with the fax machine on February 27, 2015 that caused not all the pages to go through.
6. On February 27, 2015 a different agency worker noted that the form was incomplete. Rather than calling the petitioner to inform her that this form was incomplete, they forwarded the information to the centralized document processing unit (CDPU).
7. Three days later, after the petitioner's child authorization had ended, the agency's CDPU sent the petitioner a notice stating that her six month report form was incomplete. The form directs her to "please return all documents when resubmitting [the form] to CDPU."
8. On March 24, 2015 the petitioner again brought a completed six month report form to the agency. She again faxed it. The agency was again missing pages.
9. On April 1, 2015 the agency case notes state that they received a completed six month report form.
10. The agency did not send the petitioner any additional notices. The petitioner believed that she was open and receiving child care.
11. In May 2015 the petitioner received a \$2,000 bill for child care. On May 28, 2015 she contacted the agency. They explained that her child care closed effective March 1, 2015. She informed them that the child care was for her foster child's baby. However, the baby was never placed in foster care, only the baby's mother was a foster child. The baby's mother turned 18 on March 8, 2015. She was still a high school student at that time. The agency further informed the petitioner that her foster child, the baby's mother, would have to apply for child care benefits on her own. They told her to contact her foster care case worker.
12. The petitioner again followed up with the agency on June 26, 2015. She was again told that there was nothing that the agency could do. She informed the agency that her foster daughter was working and needed child care for work, but that the foster daughter would apply for child care on her own. The worker told her that the foster daughter was not eligible on her own since she was still the petitioner's foster child. The agency worker provided the petitioner with the information necessary to Request a Fair Hearing.
13. On August 6, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency

concerning Child Care actions must be filed within **45** days of the date of the action. Wis. Admin. Code §HA 3.05(3).

In this case the agency sent the petitioner a notice of negative action on February 16, 2015. She did not file a Request for Fair Hearing until August 6, 2015. Ordinarily, I would find that her Request for Fair Hearing was untimely. However, in this case, although the agency sent the negative notice the agency continued to work with the petitioner. They continued to accept information from her on multiple occasions. Eventually on April 1, 2015 they accepted what they viewed as a completed six month report form. They failed to inform the petitioner or send the petitioner a notice stating that despite the fact that the form was complete, she remained ineligible for child care benefits. This is agency error. Had they sent her a notice to this effect, she could have appealed. Having not been informed of the current status of her case, the petitioner believed that she was receiving child care assistance.

In May 2015 the petitioner received a \$2,000 bill from her child care provider. She contacted the agency on May 28, she was told to contact the foster care case worker. She contacted her foster care case manager. She again contacted the agency on June 26, 2015. It had become clear that there was nothing the agency would do. The agency informed her of her right to a fair hearing, and she requested a fair hearing within 45 days of being informed of this right. Because her appeal is within 45 days of the agency informing her of this right, I find that the petitioner's appeal is timely.

The case involves child care assistance coverage for the petitioner's foster care child's baby. The petitioner's foster child had a baby in 2013. The foster child continued to attend high school while taking appropriate care of her baby. The baby was not placed on a child in need of protection and services (CHIPS) order. On the other hand, the petitioner's foster daughter was placed in the petitioner's home through a CHIPS order.

Children are removed from a parent's home and placed into foster care through chapter 48 of the Wisconsin Statutes. The purpose of Chapter 48 is "to protect children [], to preserve the unity of the family, [] by strengthening family life through assisting parents [] in fulfilling their responsibilities as parents." Wis. Stat §48.01. A child welfare agency has the legal authority to "provide appropriate care and training for children in its legal or physical custody." Wis. Stat §48.61(3).

Wis. Stat. §49.155 authorizes the Department to operate a child care subsidy program for Wisconsin Works (W-2) recipients and working parents. See also Wis. Admin. Code §DCF 101.26. The Department has a *Child Day Care Manual (Manual)* that provides the specific policies for the program. See the *Manual* online at <http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm#Welcome.htm> (last viewed November 2015). The purpose of the Wisconsin Shares Child Care Subsidy Program is to assist low-income families with a portion of their child care costs while they are working or participating in activities that will lead to work and economic self-sufficiency. *Manual*, §1.1.1.

For a foster child to be eligible for child care assistance, the child's biological or adoptive parents' income must be below 200% Federal Poverty Level (FPL) at the time the child was removed from the home. *Manual*, §1.8.1. If the biological or adoptive parents' meets this requirement, then the foster family's income is not used in determining eligibility for child care assistance. *Id.* Foster care parents are exempt from the non-financial requirement to provide verification within 7 days as described in section 1.6 of the manual. *Manual*, §1.8.3.

For anyone to obtain child care assistance, the family's gross income must be at or below 185% of the FPL. *Manual*, §1.5.1. All parents responsible for caring for the child must be in an approved activity. *Manual*, §1.4.8. Approved activities include, but are not limited to high school and employment. *Manual*, §1.4.8.2. and *Manual*, §1.4.8.3. Families can continue to receive child care assistance if their income stays below 200% of the FPL and they continue to be in an approved activity. *Manual*, §1.5.2.

To maintain eligibility for child care assistance, recipients must complete six month report forms (SMRF). *Manual*, §1.9.3. The agency will not authorize child care assistance until all information has been completed on the SMRF and all necessary verification has been obtained. *Id.* Foster care parents are exempt from the non-financial requirement to provide verification within 7 business days as detailed under section [1.6](#) *Manual*, §1.8.3.. Section 1.6 lists all required verification. Information that is autopopulated by the data exchange is considered verified. *Manual*, §1.6.3. The worker still needs to ensure that the information is accurate, but the recipient does not need to verify this data exchange information. *Id.* The only exception would be questionable information where clarification is necessary. *Manual*, §1.6.4.

I find that the petitioner submitted a completed six month report form on February 27, 2015. The agency presents inconsistent evidence showing that the petitioner's six month report form was incomplete. The exhibits show that they received three copies of page 15, one copy of page 16, and page 10. One case note states that they only received pages 10 and 15 on February 27, 2015. A different case note states that they received pages 9, 10, 15, and 16 on February 27, 2015. The exhibits with the faxes are entirely out of order making it very difficult to determine what they received on which dates.

The petitioner credibly testified that she completed the entire six month report form, took the form to the agency for submission, the front desk agency worker then took out several pages telling the petitioner that she did not need those pages because this was a foster care case. Finally the front desk worker faxed the remaining pages to the correct department. This testimony is very credibly. Bolstering the credibility of this testimony is the fact that the agency is unable to state which pages they received. Three copies of the same page were faxed. The faxed page numbers are odd, and do not seem to match. It appears that there were two faxes on February 27; one with three pages, and another fax with eight pages, however, all of these pages are not included in the exhibits. I conclude that the agency must have been having an issue with their fax machine on that date. Based upon the petitioner's credibility and evidence presented by the agency I find that she returned a completed six month report form to the agency on February 27, 2015.

I further note that although verification is important, the agency should not over verify. All of the information that the agency needed to verify was in their computer system. The foster care case worker works for the same agency out of the same building. The foster care case worker keeps notes and information in the agency's system. The foster care worker would have also been familiar with the petitioner, her foster daughter, and the foster daughter's baby. The required information for child care assistance could have been verified through the foster care worker or the computer system.

Because the agency erred in finding the petitioner's six month report form was not submitted timely on February 27, 2015. The agency must go back to the date, and cure the errors going forward from that date. The petitioner should also cooperate in this process.

CONCLUSIONS OF LAW

The agency incorrectly terminated child care benefits for the petitioner's teenage foster care daughter's child effective March 1, 2015 for failing to complete a six month renewal of benefits.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency with the instructions to treat the completed information received on April 1, 2015 as received on February 27, 2015. The petitioner is then eligible to receive child care benefits in March 2015. If there are additional notices or information required after March, the

agency can create those notices, and work with the petitioner to obtain the necessary information for child care assistance. The agency shall comply with this order within 10 days of the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

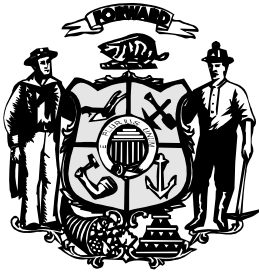
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of November, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 17, 2015.

Kenosha County Human Service Department
Child Care Benefits